

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

CYNTHIA LEAL AND ELEZAR LEAL

§

*Plaintiffs,*

§

v.

§

NATIONWIDE GENERAL  
INSURANCE COMPANY

§

*Defendant.*

§

CIVIL ACTION NO. 5:15-cv-208

**NOTICE OF REMOVAL**

Defendant, Nationwide General Insurance Company (hereinafter “Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the captioned action *Cynthia Leal and Elezar Leal v. Nationwide General Insurance Company*; Cause No. 2015CVF002532D3, in the 341st District Court of Webb County, Texas.

**BACKGROUND**

1. Plaintiffs Cynthia and Elezar Leal (hereinafter “Plaintiffs”) initiated the present action by filing their Original Petition in Cause No. 2015CVF002532D3, in the 341st District Court of Webb County, Texas on July 24, 2015 (the “State Court Action”). *See* Plaintiffs’ Original Petition, attached as **Exhibit A**.

2. Defendant filed its Original Answer on September 21<sup>st</sup>, 2015, asserting a general denial to the claims and allegations made in Plaintiffs’ Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

## **II. DIVERSITY JURISDICTION**

3. Pursuant to 28 U.S.C. § 1441(a) “any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” The Court has original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

4. Plaintiffs are domiciled in Webb County, Texas. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiffs are citizens of the State of Texas.

5. Nationwide General Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Columbus, Franklin County, Ohio.

8. Plaintiffs’ Original Petition states that Plaintiffs seek “monetary relief, the maximum of which is over \$100,000 but not more than \$200,000.” *See* Plaintiffs’ Original Petition, **Exhibit A, ¶ X.**

9. Plaintiffs’ Original Petition generally alleges that wind and hail damaged both the exterior and interior of their home, that the damage is covered under a policy issued by Nationwide General Insurance Company, and that a claim made on the policy was underpaid by Defendant. Plaintiffs seek compensation for actual damages, mental anguish damages, treble damages, exemplary damages, penalty interest of 18%, attorney’s fees and costs. *See Exhibit A, ¶ VII.* All of the Plaintiffs’ monetary claims, including the claims for penalties, exemplary damages, mental anguish damages, and attorney’s fees, are included as part of the amount in controversy. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326,

330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

10. Plaintiffs' Original Petition establishes by a preponderance of the evidence that that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

11. Removal is proper pursuant to 28 U.S.C. § 1332 as there is complete diversity between Plaintiffs and Defendant, the amount in controversy exceeds \$75,000, and Defendant is not a citizen of the state in which this case was brought.

12. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiffs through their attorney of record, and to the clerk of the 341<sup>st</sup> Judicial District Court of Webb County, Texas.

13. Pursuant to 28 USC § 1446(a) and Local Rule 81.1, all required process, pleadings, and orders in the State Court Action not otherwise specifically identified as separate exhibits have been requested and will be filed upon receipt.

*(Signatures on following page)*

Respectfully submitted,

/s/ Patrick M. Kemp

Patrick M. Kemp  
Texas Bar No. 24043751  
Southern District Bar No. 38513  
Segal McCambridge Singer and Mahoney  
100 Congress Ave., Suite 800  
Austin, Texas 78701  
Telephone: (512) 476-7834  
Facsimile: (512) 476-7832  
pkemp@smsm.com

**ATTORNEY-IN-CHARGE FOR DEFENDANT,  
NATIONWIDE GENERAL INSURANCE  
COMPANY**

OF COUNSEL:

Robert G. Wall  
Texas Bar No. 24072411  
Southern District Bar No. 1117137  
rwall@smsm.com  
Segal McCambridge Singer & Mahoney  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
Phone: (512) 476-7834  
Fax: (512) 476-7832

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail, return receipt requested on this 21<sup>st</sup> day of September, 2015.

Robert A. Polлом  
Masha Tajipour  
Ketterman Rowland & Westlund  
16500 San Pedro, Suite 302  
San Antonio, Texas 78232  
robert@krwlawyers.com  
masha@krwlawyers.com

**7196 9008 9111 1861 4273**

/s/ Patrick M. Kemp  
Patrick M. Kemp